

Appl. No. 10/639,076
Amtd. dated November 11, 2004
Reply to Office Action of May 19, 2004

REMARKS

Applicants respectfully request entry of the Amendment and reconsideration of the claims.

Claims 32 -34 are added. Support for new claims 32-34 is found throughout the specification, for example, pg. 25 ln. 39 - pg. 26 ln.24; in Table I at page 47; Table II at page 48; pg. 45 ln. 21-23; and pg. 48 ln. 35 - pg. 49, ln. 1.

Claims 1, 2, 12, 15, 16-18 and 30-31 are amended to clarify the subject matter of the invention. Applicants submit that the claims as amended are supported throughout the specification and do not raise any issues of new matter.

After entry of the present Amendment, claims 1-34 are pending.

Restriction/Election

Applicants elect for prosecution Group I (Claims 1-18 and 27-31), and further elects as a first species, SEQ ID NO: 4 with traverse.

Restriction to one of the following inventions is required by the Examiner:
Group I: Claims 1-18, 27-31, drawn to a peptide that binds FVII/FVIIa and pharmaceutical compositions thereof, classified in class 530, and subclass 300.

Group II: Claim 20, drawn to a method of selecting a compound that inhibits the activation of FVII/FVIIa activity, classified in class 435, subclass 7.1.

Group III: Claims 19, 21-24, drawn to a method of inhibiting FVIIa or the activation of FX, classified in class 435, subclass 7.1.

Group IV: Claims 25 and 26, drawn to a method of treating a TF/FVIIa mediated disease, classified in class 514, subclass 2.

New claims 32-34 fall within the elected group. The Examiner indicates that Group I is related to Groups II-IV as product and process of use. The non-elected method claims are withdrawn and will be maintained in the application for rejoinder as a matter of right upon allowance of one or more product claims.

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Additional Restriction Requirement

The Examiner has asserted a further restriction requirement directed to the peptides disclosed in the present application. The Examiner has required restriction to a single peptide (e.g., SEQ ID NO:) based on 35 USC § 121. The Examiner has indicated that absent evidence to the contrary, each different peptide sequence is considered distinct and/or independent, on the basis of physical, chemical and biological properties and function(s).

Applicants respectfully traverse the restriction above and request reconsideration, including either withdrawal or modification of the restriction to a genus/species election with retention of a reasonable number of species in the application.

Applicants elect SEQ ID NO: 4, with traverse. The elected specie SEQ ID NO: 4 is a member of the genus's defined in claims 1 and 32, as well as the sub-genus's defined in claims 2, 12-17 and 33.

The Applicants assert that it would not be unduly burdensome to search more than a single species of the genus of peptides as claimed by Applicants. In addition, Applicants respectfully submit that the law requires that a genus claim be searched and examined, as well as a reasonable number of species. See 37 CFR 141

§ 1.141 Different inventions in one national application.

(a) Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

The peptides of the invention are members of a genus of compounds with related chemical structure and function and therefore, would not be unduly burdensome to search. The relationship of the sequences of some embodiments of the claimed peptides is readily apparent in Table I at page 47, Table II at page 48 and Figure 4. All of the

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claimed peptides are members of the genus of claim 1. The binding and inhibition of FVII/FVIIa activity for the claimed peptides is supported by the specification. Applicant's request reconsideration of the restriction requirement because it would not be unduly burdensome to search a genus claim and more than one species based on the related structural, chemical, biological, and functional properties of the claimed genus of peptides.

Applicant's further assert that the species are linked under one or more genus claims, i.e., claims 1 or 32. Claim 32 presents a genus of disulfide-constrained peptides with at least 8 non-substituted amino acids. As discussed previously, under 37 CFR 1.141, an allowable generic claim may link a reasonable number of species embraced thereby. Restricted species members of a genus should be rejoined if the genus is found to be patentable.

Applicant's request the Examiner, in the least, examine the eight species presented in claim 34 in the application, as a search of those eight species would not be unduly burdensome. Included within the species of claim 34 is the elected species SEQ ID NO:4. SEQ ID NOs: 64, 65, and 66 vary from each other at only one residue. Applicants further request acknowledgment of the genus claims and designation of the election requirement as a genus/species election. Applicant's request and reserve the right to have additional species and the claimed genus's examined, when the elected specie is found allowable.

Interview Summary

Applicants thank Examiner Snedden for the interview on November 10, 2004. We discussed the restriction requirement. We discussed that there were genus and subgenus claims present in the application and that there should be an election of species requirement, rather than a restriction requirement. The Examiner agreed that there are genus claims present in this case. He indicated that we should elect a species for search purposes and that he would search additional species if the elected specie was found to be free of the prior art.

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Conclusion

In light of the foregoing Amendment and Remarks, Applicants' assert the claims are in condition for allowance. Early notice of allowable claims is requested.

The Examiner is invited to telephone the undersigned attorney for clarification of any of these Remarks or Amendments, or to otherwise speed prosecution of this case.

Respectfully submitted,

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